

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE WRIGHT, individually and on behalf of all others similarly situated,

Plaintiff,

V₃

KELLER WILLIAMS REALTY, INC., a Texas corporation,

Defendant.

NO.

CLASS ACTION COMPLAINT

JURY DEMAND

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Bruce Wright (“Plaintiff” or “Wright”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Keller Williams Realty, Inc. (“Defendant” or “Keller Williams”) to stop Keller Williams from directing its franchisees to violate the Telephone Consumer Protection Act by making unsolicited, autodialed calls to consumers *without their consent*, including calls to consumers registered on the National Do Not Call registry, and to otherwise obtain injunctive and monetary relief for all persons injured by Keller Williams’ conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

INTRODUCTION

1. Keller Williams is a real estate franchise started with a single office in Austin, Texas in 1983 by Gary Keller and Joe Williams. Since that time, Keller Williams has grown to more than 900 locations with over 170,000 agents worldwide, becoming the largest real estate franchise in the world.

2. Keller Williams differentiates itself from other real estate franchises through its training and coaching programs, through which Keller Williams directs the activities of its franchisees, including their marketing efforts. In fact, “Gary Keller has often said that Keller Williams is ‘a training and coaching company that also happens to be in the business of real estate.’”¹

3. As a result, in 2015, Training Magazine recognized Keller Williams “as the world’s #1 training organization across all industries.”² And, both before and since then, Keller Williams has consistently placed in the Top 5 on the Training 125, which ranks companies’ excellence in employer-sponsored training and development programs.³

4. Relevant here, for the last several years, a key component of Keller Williams' marketing plan for franchisees instilled through its award winning training and coaching programs has been for agents to purchase lists of potential leads for real estate listings from Landvoice Data LLC ("Landvoice"), a company that generates leads from a variety of sources, matches phone numbers to those leads, including cellular telephone numbers and other numbers registered on the National Do Not Call Registry, and provides a web-hosted autodialer for agents to make marketing calls *en masse* to those numbers without the recipients' consent.

5. In Plaintiff's case, between January 1, 2018 and January 15, 2018, Keller Williams' marketing plan involving Landvoice's leads and autodialer resulted in no fewer than 20 unsolicited, autodialed calls by or on behalf of Keller Williams to Plaintiff's two cellular

¹ From the Keller Williams Education website, available at, <http://www.kw.com/kw/education.html> (last accessed March 28, 2018).

² KW Maps Coaching, available at, <http://mapscoaching.kw.com/coaches/dianna-kokoszka>.

³ <https://blog.kw.com/keller-williams-named-top-training-organization-worldwide>

telephone numbers registered on the National Do Not Call Registry (“DNC”), including 8 such calls to *ring* in the new year on January 1, 2018.

6. In response to these calls, Plaintiff files this lawsuit seeking injunctive relief, requiring Defendant to cease directing its agents to violate the Telephone Consumer Protection Act by placing unsolicited calls to consumers' cellular telephone numbers using an automatic telephone dialing system and otherwise calling telephone numbers registered on the DNC, as well as an award of statutory damages to the members of the Classes and costs.

PARTIES

7. Plaintiff Bruce Wright is a resident of Point Roberts, Washington.

8. Defendant Keller Williams is a Texas corporation headquartered at 1221 South Mopac Expressway Suit 400, Austin, Texas 78746. Defendant conducts business throughout this District and the United States.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331, as the action arises under the TCPA, which is a federal statute for which there is federal question jurisdiction.

10. This Court has personal jurisdiction over Defendant and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant does significant business in this District and the state of Washington, and because the wrongful conduct giving rise to this case occurred in this District. Venue is additionally proper because Plaintiff resides in this District.

COMMON ALLEGATIONS

Keller Williams Directs Franchisees to Market Keller Williams' Realty Services By Purchasing Lists of Leads from Landvoice and Autodialing Them Without Consent

11. Keller Williams' marketing plan direct agents to use certain prescribed practices to market Keller Williams' realty services, including unsolicited, autodialed calls to cellular telephone numbers and other telephone numbers registered on the DNC. Keller Williams impresses its marketing plan on its network of agents through its coaching and training

1 programs, during national events like the Keller Williams Mega Camp and Keller Williams
 2 Family Reunion and through courses and materials offered by Keller Williams University and
 3 KW MAPS (Keller Williams Mega Achievement Productivity Systems).

4 12. Keller Williams also maintains an Approved Vendor program. Keller Williams
 5 gives Approved Vendors its “trusted” seal of approval with corresponding “[a]ccess to more
 6 than 150,000 Keller Williams associates and more than 750 franchises throughout the United
 7 States and Canada.”⁴ One of Keller Williams primary Approved Vendors is Landvoice, a
 8 company that sells agents lists of real estate leads, researches telephone numbers associated
 9 with the leads, and provides agents with an online automatic telephone dialing system which
 10 allows them to load the lists of leads using a sequential number generator and then dial them.

11 13. Landvoice’s leads are in the first instance aggregated from expired listings, for-
 12 sale-by-owner properties, old expired leads, and pre-foreclosure leads. Landvoice then uses
 13 state-of-the-art technology to “take additional steps to deliver the highest quality and quantity
 14 of owner contact information including cell phone numbers.”⁵ Landvoice generates multiple
 15 phone numbers (including cell phone numbers and numbers listed on the DNC) for each lead to
 16 ensure that the agent calling has the best chance of reaching the client.⁶ (This type of lead
 17 gathering information has been commonly used by debt collectors for instance who use skip-
 18 tracing to track every possible contact related to a particular individual.)

19 14. Landvoice’s service includes the automatic loading of the Landvoice-generated
 20 list, using a sequential number generator, into a “Power Dialer,” an automatic telephone dialing
 21
 22
 23

24 ⁴ See Keller Williams Approved Vendors page, <http://www.kw.com/kw/vendor-network.html>, and see also the YouTube Video
 25 at the bottom in which KW agents talk about the trust they have when vendors are considered Approved Vendors (last accessed March 28, 2018).

26 ⁵ <https://www.linkedin.com/company/landvoice/>

27 ⁶ Landvoice is owned by Domega, Inc., “the world leader of data aggregation and lead generation [which uses] hi-tech creative systems to give clients hard-to-get data and leads.” See <https://www.linkedin.com/company/domega-inc-/>

1 system that “dial[s] leads” at a rate of 80 to 300 per hour and delivers a pre-recorded message if
 2 calls are not answered:⁷ ⁸

3 | <https://landvoice.com/power-dialer/> |  LANDVOICE |  PRICING |  LOG IN | 888-678-0905 |            

4

5 **POWER DIALER**

6 [pou-er] [dahy-ler] | **noun**

7 1. A computerized system that will dial leads for you.
 8 2. A tool used by top agents to dial more leads in less time to help them list
 9 more properties.

10

11 ****

12

13    

14

15 **Save Time** **Answer Detection** **Stay Organized** **Integrated System**

16

17 Contact more leads in less time. By using the Landvoice single-line dialer, you can dial up to 80 calls per hour. Upgrade to the 4-line dialer to call more than 300 leads each hour.

18 The Landvoice dialer allows you to quickly move from one call to the next. Instantly leave pre-recorded messages with a simple click. Avoid busy signals, disconnected phone numbers, and unanswered calls.

19 Call the right people at the right time with the built-in lead management tools. Access customer history and notes. Keep track of your effectiveness with system analytics and reports.

20 Your new Landvoice expired, FSBO, and pre-foreclosure leads are automatically pushed into the dialer. Have other leads you want to call? Simply import a CSV file.

21

22

23

24

25 ⁷ Advertisement available at, <https://landvoice.com/power-dialer/>.

26 ⁸ Landvoice’s lists of leads are also intended by Landvoice to be easily integrated and loaded to any autodialer, not just the one provided as part of Landvoice’s service. See blog available at, <http://activerain.com/blogsview/1170875/mojo-and-landvoice--we-play-well-together--->.

1 15. The problem with this whole system is that Landvoice is providing multiple
2 phone numbers (including cell phone numbers and numbers listed on the DNC) along with
3 access to an autodialer system to agents and neither Landvoice nor the agents have consent to
4 call these consumers' phone numbers using an autodialer in clear violation of the TCPA. In
5 fact, Landvoice has expressly acknowledged in response to an Atlanta Keller Williams' agent's
6 complaints, that the leads it generates include numbers on the DNC and that, as part of its
7 autodialer, it does not provide users a mechanism to filter out numbers on the DNC.⁹ ¹⁰



9 Amanda @amandakayleigh

January 3

10 When is @Landvoice going to come out with a feature to filter
11 out #'s on the DNC list?? Frustrating when every single page is
12 numbers on the DNC list. Finding it to be useless.
13 pic.twitter.com/up7mulKHaa



15 LandvoiceSellerLeads

16 @Landvoice

Follow



17 Replying to @amandakayleigh

18 Thanks for the feedback. We're happy to say
19 that it (and other filters) are coming soon!

20 10:35 AM - 3 Jan 2018



23
24 ⁹ Tweet at, <https://twitter.com/amandakayleigh>, and reply at, <https://twitter.com/Landvoice/status/948623975852138496>; see
also <http://www.kw.com/kw/agent/amanda-kay>.

25 ¹⁰ Consumers' complaints to Landvoice regarding calls to numbers on the DNC are available at,
<https://www.bbb.org/utah/business-reviews/sales-lead-generation/landvoice-data-llc-in-orem-ut-22168844/reviews-and-complaints?section=complaints>.

1 16. Notwithstanding, Keller Williams directs its franchisees and their agents to use
 2 the Landvoice system, which by definition knowingly promotes their violating the TCPA.¹¹

3 17. For example, Keller Williams includes Landvoice as a regular participant in its
 4 annual Mega Camp training program.¹² Among other things, as part of Mega Camp, Keller
 5 Williams “team[s] with” Landvoice to promote widespread access to Landvoice’s leads and
 6 autodialer system:¹³

21 11 In fact, Keller Williams posted a YouTube video inaccurately advising agents that they may call numbers that are on the
 22 DNC, explaining: “*If for sale by owner and on the DNC, you may call them anyway.*” Video available at,
 23 <https://www.youtube.com/watch?v=UVBfyPfDDjQ>

24 12 See video of Landvoice at Megacamp at, <https://www.youtube.com/watch?v=ICHXd07b8tc> (last accessed March 28, 2016).

25 13 The deal is available at, <https://www.landvoicedata.com/kw/> (last accessed March 28, 2016).

1 18. Similarly, Landvoice is a regular participant and presenter regarding its lead
 2 generating and autodialing services at Keller Williams Family Reunion, a yearly event with
 3 over 10,000 attendees, which features Keller Williams executives and master faculty leading
 4 educational sessions covering sales skills, leadership skills, and technology training.^{14 15 16 17}

5 19. In addition to endorsing Landvoice's presentation at Family Reunion, Keller
 6 Williams' own trainers from Keller Williams University – which "provides an industry-leading
 7 curriculum addressing every aspect of success in real estate"¹⁸ – direct Keller Williams agents
 8 at Family Reunion, and as part of other Keller Williams University training programs, to
 9 purchase lead lists and call them using an autodialer:

10 **Just Listed / Just Sold Circle**
 11 **Prospecting**

12 • Always have 300 – 500 phone numbers in
 13 reserve so you always have a call list.
 14 • Use a dialer:
 15 • archagent PowerDialer
 16 • Mojo Dialer
 17 • Landvoice

18 FAMILY REUNION
 19 2016

20 20. Other Keller Williams programs and materials similarly direct franchisees to use
 21 an autodialer to call leads. For example, Keller Williams' training manual for agents called

22 ¹⁴ <https://trainingmag.com/trgmag-article/keller-williams-home-no-1>

23 ¹⁵ Instagram post with the caption "...#Landvoice at #KWFR2018" [KWFR is Keller Williams Family Reunion] available at, <https://www.instagram.com/p/BfcEDa9HwWD/>, and photo of the Landvoice table available at, <https://i.pinimg.com/736x/e6/85/6f/e6856f4daa3bd8984a089588fdf381b7--family-reunions-orlando-florida.jpg>.

24 ¹⁶ <https://trainingmag.com/trgmag-article/keller-williams-home-no-1>

25 ¹⁷ Instagram post with the caption "...#Landvoice at #KWFR2018" [KWFR is Keller Williams Family Reunion] available at, <https://www.instagram.com/p/BfcEDa9HwWD/>, and photo of the Landvoice table available at, <https://i.pinimg.com/736x/e6/85/6f/e6856f4daa3bd8984a089588fdf381b7--family-reunions-orlando-florida.jpg>.

26 ¹⁸ As stated on the KW Education webpage, <http://www.kw.com/kw/education.html>.

1 Three L Blueprints, which Landvoice publishes on its website, makes clear to agents that using
 2 an autodialer is required to become the “highest-performing associate[].”¹⁹

3 21. In fact, Keller Williams’ marketing plan for franchisees – involving purchasing
 4 lists of leads and autodialing them – is reinforced at the highest levels of Keller Williams’
 5 organization. Dianna Kokoszka, CEO of KW MAPS Coaching at Keller Williams, who co-
 6 teaches training classes with Keller Williams founder Gary Keller, developed an entire training
 7 program called BOLD (Business Objective: A Life by Design) – which Keller Williams claims
 8 “has helped **tens of thousands**” of its agents – which is centered around obtaining Landvoice
 9 generated leads and autodialing them. In fact, Keller Williams agents who sign up for BOLD
 10 are given a free trial account with Landvoice.²⁰



22 22. Keller Williams coaching and training programs and materials are an integral
 23 part of the Keller Williams franchise system, and are the means by which Keller Williams
 24

25 ¹⁹ Full training manual available here, https://landvoice.com/wp-content/uploads/2017/05/KW_Three_L_Blueprints.pdf.

26 ²⁰ <https://landvoice.com/bold/welcome/>

1 controls the manner in which franchisees market for new listings – i.e., buying lists of leads and
 2 autodialing the associated telephone numbers without consent and, as a result of known
 3 deficiencies in Landvoice’s products, oftentimes notwithstanding their being registered on the
 4 DNC.

5 **PLAINTIFF’S ALLEGATIONS**

6 **At Keller Williams’ Direction, Keller Williams Agents Repeatedly Called Plaintiffs’
 7 Cell Phone Numbers Without Plaintiffs’ Consent, Despite Their Being Listed on the DNC**

8 23. Plaintiff Wright is the subscriber of two cellular telephone numbers that have
 9 been registered on the DNC since January 22, 2016 to prevent unsolicited marketing calls.

10 24. In 2017, Plaintiff, through a Re/Max real estate agency, listed for sale an
 11 apartment he owns in Orlando, Florida. The official multiple listing service listing for the
 12 property provided the Re/Max agent’s telephone number as a contact number, and did not list
 13 any of Plaintiff’s telephone numbers. In late 2017, at Plaintiff’s request, Re/Max removed
 14 Plaintiff’s listing from the market.

15 25. As soon as the listing was removed, Plaintiff began receiving unsolicited
 16 autodialed calls on his cellular phone and on the cellular phone of his daughter. Not
 17 surprisingly, this is one of the advertised features of Landvoice: to immediately identify and
 18 allow agents to call phone numbers related to “expired” listings – regardless of whether the
 19 consumer has advertised his phone number (which Plaintiff did not do), or given consent to
 20 being contacted (which Plaintiff also did not do):²¹

21 Landvoice webpage, <https://landvoice.com/>.


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ESSENTIAL LEADS



EXPIRED
Be the first to call these listings that may want a new agent.

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FSBO
Most FSBOs eventually list with an agent. Be that agent.

[LEARN MORE](#)


NEIGHBORHOOD SEARCH
Unlimited use of the best geo farming tool.

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PRE-FORECLOSURE
Distressed property leads in your area.

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26. Between January 1, 2018 and January 15, 2018, Plaintiff received at least 20 calls to his two cellular telephone numbers from at least 4 different Keller Williams franchises. The following chart provides a breakdown of the calls by cellular telephone number, franchise, calling phone number, date, and time:

First Cell Phone Number

Keller Williams Classic:

- January 1, 2018 using phone number 407-353-7706 at 10:04 AM
- January 15, 2018 using phone number 407-445-7088 at 9:20 AM

Keller Williams Advantage:

- January 1, 2018 using phone number 407-535-1300 at 5:22 PM

Keller Williams Classic II:

- January 3, 2018 using phone number 407-476-3660 at 10:34 AM

Unknown Keller Williams:

- January 1, 2018 using phone number 407-476-1651 at 8:20 AM
- January 2, 2018 using phone number 407-476-1651 at 7:18 PM

Second Cell Phone Number

Keller Williams Classic:

- January 1, 2018 using phone number 407-353-7706 at 7:08 AM
- January 1, 2018 using phone number 407-292-5400 at 8:40 AM

Keller Williams Advantage:

- January 1, 2018 using phone number 321-296-9641 at 7:25 AM
- January 2, 2018 using phone number 407-535-1300 at 9:33 AM
- January 9, 2018 using phone number 407-207-0825 at 5:56 AM
- January 10, 2018 using phone number 407-207-0825 at 6:48 AM
- January 10, 2018 using phone number 407-207-0825 at 9:09 AM

Keller Williams Classic II:

- January 3, 2018 using phone number 407-476-3660 at 7:34 AM

Keller Williams Parks:

• January 15, 2018 using phone number 407-865-0427 at 10:37 AM

Unknown Keller Williams:

- January 1, 2018 using phone number 407-476-1651 at 5:20 AM
- January 1, 2018 using phone number 407-476-1651 at 9:27 AM
- January 10, 2018 using phone number 352-631-7985 at 7:24 AM
- January 10, 2018 using phone number 352-631-7985 at 8:00 AM
- January 10, 2018 using phone number 352-631-7985 at 8:02 AM

27. The calls to Plaintiff were solicitations by Keller Williams' agents. They were marketing their real estate services in an effort to obtain the listing for Plaintiff's Orlando property. When Plaintiff asked the agents how they got his contact information, he was told on multiple occasions that his phone numbers were provided by Landvoice because it was associated with an expired listing. He was also told that that calls were being made to him from

Landvoice's list of leads using a dialer on which the leads were loaded. Among other agents, this was expressly stated to Plaintiff by Dustin Berger from Keller Williams Parks on January 15, 2018, during a call that began with a noticeable pause, indicating that an autodialer was used.

28. Prior to that, on January 1, 2018, Plaintiff received a voicemail from phone number 321-296-9641. The call came in at 7:25 AM from a Keller Williams Advantage agent who asked Plaintiff to call him back at phone number 407-270-2168.

29. Plaintiff Wright has never provided his telephone number directly to Landvoice, or any Keller Williams entity, or otherwise consented to any Keller Williams agent placing solicitation telephone calls to his cellular telephone numbers.

30. The unauthorized telephone calls made by Keller Williams' agents at Keller Williams' direction, as alleged herein, have harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Wright's use and enjoyment of his phones, in addition to the wear and tear on the phones' hardware (including the phones' battery) and the consumption of memory on the phones.

31. Seeking redress for these injuries, Wright, on behalf of himself and Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited autodialed voice calls to cellular telephones, unsolicited calls using a pre-recorded voice, and unsolicited calls to telephone numbers registered on the DNC.

CLASS ALLEGATIONS

Class Treatment Is Appropriate for Plaintiff's TCPA Claims Arising From Calls Made by Keller Williams Agents at Keller Williams' Direction

32. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following two Classes:

Autodialed No Consent Class: All persons in the United States from four years prior to the filing of this action through the present who (1) Defendant (or an agency acting on behalf of Defendant) called, (2) on the person's cellular telephone, (3) using an autodialer, and (4) for whom Defendant claims (a) they obtained prior express written consent in the same manner as Defendant claims they supposedly obtained prior express written consent to call the Plaintiff Wright, or (b) they did not obtain prior express written consent.

Do Not Call Registry Class: All persons in the United States who (1) Defendant (or an agency acting on behalf of Defendant) called more than one time on his/her cellular telephone; (2) within any 12-month period (3) where the cellular telephone number had been listed on the National Do Not Call Registry for at least thirty days; (4) for the purpose of selling Defendant's products and services; and (5) for whom Defendant claims (a) they obtained prior express written consent in the same manner as Defendant claims they supposedly obtained prior express written consent to call the Plaintiff Wright, or (b) they did not obtain prior express written consent.

33. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definitions following appropriate discovery.

34. On information and belief, there are hundreds, if not thousands of members of the Classes such that joinder of all members is impracticable.

35. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- 1 (a) whether Defendant's conduct constitutes a violation of the TCPA;
- 2 (b) whether Defendant utilized an automatic telephone dialing system to make their
- 3 calls to Plaintiff and the members of the Classes;
- 4 (c) whether Defendant systematically made multiple telephone calls to Plaintiff and
- 5 consumers whose telephone numbers were registered with the National Do Not
- 6 Call Registry and whether calls were made to such persons after they requested
- 7 to no longer be called.
- 8 (d) whether Defendant made autodialed telephone calls to Plaintiff and members of
- 9 the Classes without first obtaining prior express written consent to make the
- 10 calls;
- 11 (e) whether Defendant left voicemails using a pre-recorded or artificial voice; and
- 12 (f) whether members of the Classes are entitled to treble damages based on the
- 13 willfulness of Defendant's conduct.

13. **Adequate Representation:** Plaintiff will fairly and adequately represent and
 14 protect the interests of the Classes, and has retained counsel competent and experienced in class
 15 actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no
 16 defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting
 17 this action on behalf of the members of the Classes, and have the financial resources to do so.
 18 Neither Plaintiff nor his counsel has any interest adverse to the Classes.

17. **Appropriateness:** This class action is also appropriate for certification because
 18 Defendant has acted or refused to act on grounds generally applicable to the Classes and as a
 19 whole, thereby requiring the Court's imposition of uniform relief to ensure compatible
 20 standards of conduct toward the members of the Classes and making final class-wide injunctive
 21 relief appropriate. Defendant's business practices apply to and affect the members of the
 22 Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct
 23 with respect to the Classes as wholes, not on facts or law applicable only to Plaintiffs.
 24 Additionally, the damages suffered by individual members of the Classes will likely be small
 25 relative to the burden and expense of individual prosecution of the complex litigation
 26 necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of
 27

1 the Classes to obtain effective relief from Defendant's misconduct on an individual basis. A
 2 class action provides the benefits of single adjudication, economies of scale, and
 3 comprehensive supervision by a single court. Economies of time, effort, and expense will be
 4 fostered and uniformity of decisions will be ensured.

5 **FIRST CLAIM FOR RELIEF**
 6 **Telephone Consumer Protection Act**
 7 **(Violation of 47 U.S.C. § 227)**
(On Behalf of Plaintiff and the Autodialed No Consent Class)

8 38. Plaintiff repeats and realleges the above paragraphs of this Complaint and
 9 incorporates them by reference herein.

10 39. Defendant and/or its agents transmitted unwanted solicitation telephone
 11 calls to cellular telephone numbers belonging to Plaintiff and the other members of the
 12 Autodialed No Consent Class using equipment that, upon information and belief, had the
 13 capacity to store or produce telephone numbers to be called, using a random or sequential
 14 number generator.

15 40. These solicitation telephone calls were made *en masse* without the prior express
 16 written consent of the Plaintiff and the other members of the Autodialed No Consent Class to
 17 receive such solicitation telephone calls.

18 41. At no time did Defendant obtain prior express written consent from the Plaintiff
 19 orally or in writing to receive solicitation telephone calls. Also, at no time did Defendant obtain
 20 prior express written consent that contained a disclosure informing Plaintiff or any other
 21 consumer that agreeing to receive solicitation telephone calls was not a condition of the
 22 purchase of any property or service.

23 42. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of
 24 Defendant's conduct, Plaintiff and the other members of the Autodialed No Consent Class are
 25 each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum of \$500.00 in damages for each
 26 violation of such act.

43. In the event that the Court determines that Defendant's conduct was wilful and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Autodialer No Consent Class.

SECOND CLAIM FOR RELIEF
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff Wright and the Do Not Call Registry Class)

44. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them by reference herein.

45. 47 U.S.C. § 227(c) provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.

46. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government.”

47. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”²²

48. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or

²² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity.”

49. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from Defendant, as set forth in 47 C.F.R. § 64.1200(d)(3).

50. Defendant also violated 47 C.F.R. § 64.1200(d) by failing to have an accurate written policy of dealing with do not call requests, by failing to accurately inform or train its personnel engaged in telemarketing regarding the existence and/or use of any do not call list, and by failing to internally record and honor do not call requests.

51. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one telephone call in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant's conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

52. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Registry Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, pray for the following relief:

53. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiff as the representative of the Classes and appointing his attorneys as Class Counsel;

54. An award of actual and statutory damages to be paid into a common fund for the benefit of Plaintiff and the Classes;

55. An order declaring that Defendant's actions, as set out above, violate the TCPA.

56. A declaratory judgment that Defendant's telephone calling equipment constitutes an automatic telephone dialing system under the TCPA;

57. An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of their unlawful telephone calling practices;

58. An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Classes;

59. An injunction prohibiting Defendant from using, or contracting the use of, an automatic telephone dialing system without obtaining, and maintaining records of, call recipient's prior express written consent to receive calls made with such equipment;

60. An award of reasonable attorneys' fees and costs to be paid out of the common fund prayed for above; and

61. Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

DATED this 2nd day of May, 2018.

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